

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD	:	
	:	
Petitioner	:	No.
v.	:	
	:	
OMEGA CONSTRUCTION SERVICES, LLC	:	Board Case No.
	:	28-CA-188536
Respondent	:	

JUDGMENT ENFORCING AN ORDER OF THE
NATIONAL LABOR RELATIONS BOARD

Before:

This cause was submitted upon the application of the National Labor Relations Board for summary entry of a judgment against Respondent, Omega Construction Services, LLC, its officers, agents, successors, and assigns, enforcing its order dated May 12, 2017, in Case Nos. 28-CA-188536, and the Court having considered the same, it is hereby

ORDERED AND ADJUDGED by the Court that the Respondent, Omega Construction Services, LLC, its officers, agents, successors, and assigns, shall abide by said order (See Attached Order and Appendix).

Endorsed, Judgment Filed and Entered

/s/ Molly Dwyer
Molly Dwyer
Clerk

NATIONAL LABOR RELATIONS BOARD

v.

OMEGA CONSTRUCTION SERVICES, LLC

ORDER

Omega Construction Services, LLC, Tucson, Arizona, its officers, agents, successors, and assigns shall:

1. Cease and desist from

- (a) Interrogating employees about their concerted activities.
- (b) Creating the impression that employees' concerted activities are under surveillance.
- (c) Promulgating overly-broad and discriminatory rules or directives prohibiting employees from "running their mouths" or communicating with third parties about their terms and conditions of employment.
- (d) Threatening employees with discharge, suspension, cessation of work assignments, and other unspecified reprisals if they engage in protected concerted activities or refuse to disclose, in response to unlawful interrogation, that they engaged in concerted activities.
- (e) Ceasing assigning work to employees, suspending, or discharging employees because they engage in protected concerted activities, and to discourage employees from engaging in these activities.
- (f) Conditioning the assignment of future work to employees on their cessation of concerted activities.
- (g) Reneging on purchase agreements or failing to reimburse employees for money already paid pursuant to a purchase agreement, because they engage in concerted activities and to discourage employees from engaging in concerted activities.
- (h) Failing to return employees' personal property because they engage in concerted activities and to discourage employees from engaging in concerted activities.
- (i) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.
 - (a) Rescind the overly broad and discriminatory rules or directives prohibiting employees from “running their mouths” or from communicating with third parties about their terms and conditions of employment.
 - (b) Rescind the threat to discharge, suspend, cease assigning employees work, or administer other unspecified reprisals because they engaged in concerted activities or because they refuse to disclose that they engaged in concerted activities in response to unlawful interrogation.
 - (c) Rescind the threat not to assign employees future work unless they cease engaging in concerted activities.
 - (d) Within 14 days from the date of this Order, offer Roy Evaimalo full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.
 - (e) Make Roy Evaimalo whole for any loss of earnings or benefits he may have suffered as a result of the unlawful refusal to assign him work, his suspension, and his discharge, in the manner set forth in the remedy section of this decision, plus reasonable search-for-work and interim employment expenses.
 - (f) Compensate Roy Evaimalo for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file with the Regional Director for Region 28, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar years.
 - (g) Within 14 days from the date of this Order, remove from its files any reference to the unlawful refusal to assign work to Roy Evaimalo, his suspension, and his discharge, and within 3 days thereafter, notify him in writing that this has been done and that the unlawful actions will not be used against him in any way.
 - (h) At the option of Roy Evaimalo, either reinstate the agreement to allow Evaimalo to purchase a work truck or reimburse Evaimalo for the \$2000 that he already paid toward the purchase price, with interest.

- (i) Return to Roy Evaimalo personal belongings, tools, and property that were left in his work truck at the time of his discharge or reimburse Evaimalo for the cost of replacing those belongings, with interest.
- (j) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.
- (k) Within 14 days after service by the Region, post at its facility in Tucson, Arizona, copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 28, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since September 3, 2016.
- (l) Within 21 days after service by the Region, file with the Regional Director for Region 28 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES

**POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES
COURT OF APPEALS ENFORCING AN ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government**

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT interrogate employees about their concerted activities.

WE WILL NOT create the impression that employees' concerted activities are under surveillance.

WE WILL NOT promulgate overly-broad and discriminatory rules or directives prohibiting employees from "running their mouths" or communicating with third parties about their terms and conditions of employment.

WE WILL NOT threaten employees with discharge, suspension, cessation of work assignments, and other unspecified reprisals if they engage in protected concerted activities or refuse to disclose, in response to unlawful interrogation, that they engaged in concerted activities.

WE WILL NOT cease assigning work to employees, suspend, or discharge employees because they engage in protected concerted activities, and to discourage employees from engaging in these activities.

WE WILL NOT condition the assignment of future work to employees on their cessation of concerted activities.

WE WILL NOT renege on purchase agreements or fail to reimburse employees for money already paid pursuant to a purchase agreement, because they engage in concerted activities and to discourage employees from engaging in concerted activities.

WE WILL NOT fail to return employees' personal property because they engage in concerted activities and to discourage employees from engaging in concerted activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL rescind the overly broad and discriminatory rules or directives prohibiting employees from "running their mouths" or from communicating with third parties about their terms and conditions of employment.

WE WILL rescind the threat to discharge, suspend, cease assigning employees work, or administer other unspecified reprisals because they engaged in concerted activities or because they refuse to disclose that they engaged in concerted activities in response to unlawful interrogation.

WE WILL rescind the threat not to assign employees future work unless they cease engaging in concerted activities.

WE WILL, within 14 days from the date of the Board's Order, offer Roy Evaimalo full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

WE WILL make employee Roy Evaimalo whole for any loss of earnings and other benefits suffered as a result of the unlawful refusal to assign him work, his suspension, and his discharge, less any net interim earnings, plus interest, plus reasonable search-for-work and interim employment expenses.

WE WILL compensate Roy Evaimalo for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and WE WILL file with the Regional Director for Region 28, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar years.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to our unlawful refusal to assign work to Roy Evaimalo, his suspension, and his discharge and WE WILL, within 3 days thereafter, notify him in writing that this has been done and that the unlawful actions will not be used against him in any way.

WE WILL, at the option of Roy Evaimalo, either reinstate the agreement to allow Evaimalo to purchase a work truck or reimburse Evaimalo for the \$2000 that he already paid toward the purchase price, with interest.

WE WILL return to Roy Evaimalo the personal belongings, tools, and property that were left in his work truck at the time of his discharge or reimburse Evaimalo for the cost of replacing those belongings, with interest.

OMEGA CONSTRUCTION SERVICES, LLC

The Board's decision can be found at www.nlr.gov/case/28-CA-188536 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

